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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

EBAY, INC., Plaintiff, v. DIGITAL POINT SOLUTIONS, INC., SHAWN HOGAN, KESSLER'S FLYING CIRCUS, THUNDERWOOD HOLDINGS, INC., TODD DUNNING, DUNNING ENTERPRISE, INC., BRIAN DUNNING, BRIANDUNNING.COM, and DOES 1-20, Defendants.	CASE NO.: CV-08-4052 JF **[PROPOSED] ORDER DISMISSING PLAINTIFF'S FIRST AMENDED COMPLAINT**

Defendants Todd Dunning and Dunning Enterprise, Inc.'s Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1), (3) and (6) came on for hearing before this Court on December 12, 2008. The matter was fully briefed and heard by the Court. The parties were represented by their respective counsel of record. Having fully considered the briefs and oral argument, the Court finds that Plaintiff has failed to state a claim on which relief can be granted in the First Amended Complaint for claims under the Federal Computer Fraud and Abuse Act, 18 U.S.C. Section 1030, California Penal Code Section 502, and the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. Section 1962(c). In addition, the Court finds that this District is not the

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proper venue for an action of the claims alleged in the First Amended Complaint. Accordingly, the Court finds that there is no federal question stated in the First Amended Complaint because the first, second and fourth claims for relief failed to state facts upon which relief can be granted.

Therefore, it is hereby ordered that the first, second and fourth claims for relief are dismissed. The remaining claims arise solely under California state law so there is no federal question or federal jurisdiction for the remaining claims. Therefore the First Amended Complaint is dismissed.

Dated:____________________________

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The Honorable Jeremy Fogel
Judge of the United States District Court